

Message Text

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ORIGIN OPIC-12

INFO OCT-01 ARA-16 ISO-00 EB-11 L-03 COME-00 TRSE-00 OMB-01

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DRAFTED BY OPIC:GC/CHUNT

APPROVED BY EB/IFD/OIA R.J. SMITH

EB/IFD/OIA:DHSTEBBING

OPIC/ID GCOOPER

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FM SECSTATE WASHDC

TO AMEMBASSY PANAMA

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E.O. 11652: N/A

TAGS: EFIN, P

SUBJECT: OPIC AGREEMENT

REF (A) PANAMA 3104

(1) IN VIEW LACK OF SUCCESS TO DATE IN ACHIEVING NEW OPIC AGREEMENT LANGUAGE THAT SATISFACTORILY ACCOMMODATES DIVERGENT GOP AND USG VIEWPOINTS AND LEGAL CONCERNS WITH RESPECT TO SCOPE OF ARBITRATION CLAUSE (AS WELL AS DIFFERENCES WITHIN USG AS TO ACCEPTABILITY OF TEXT PROPOSED BY GOP IN 1972), DEPARTMENT AND OPIC ARE PREPARED TO TRY APPROACH OF OFFERING A VERY LIMITED AMENDMENT TO EXISTING 1961 INVESTMENT GUARANTY AGREEMENT DESIGNED TO DEAL ONLY WITH LAW 14 (REAL ESTATE OWNERSHIP) PROBLEM. THOUGHT IS TO PRESENT NEW APPROACH AT FOREIGN MINISTER LEVEL AND AS FORMAL RESPONSE TO APRIL 28, 1970 FOREIGN MINISTRY NOTE, AS REF (A) INDICATES GOP EXPECTS.

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KWL EMBASSY IS AUTHORIZED TO TRANSMIT TO GOP THE PROPOSED AMENDMENT TEXT SET FORTH BELOW. TEXT IS SAME AS SECTIONS 4 AND 5 OF GOP 1972 PROPOSAL. ACCOMPANYING NOTE SHOULD REFER TO WILLINGNESS OF USG TO LIMIT CHANGES FROM THE 1961 AGREEMENT TO THOSE REQUIRED TO RESOLVE CONSTITUTIONAL CONCERNS WHICH LED TO THE ENACTMENT OF LAW NO. 14 (OF JANUARY 23, 1962).

(3) AMENDMENT TEXT IS AS FOLLOWS:

EXCELLENCY:

I HAVE THE HONOR TO REFER TO THE AGREEMENT EFFECTED BY THE EXCHANGE OF NOTES OF JANUARY 23, 1961 BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF PANAMA RELATING TO INVESTMENT GUARANTIES WHICH MAY BE ISSUED BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR INVESTMENTS IN THE REPUBLIC OF PANAMA. IN ORDER TO REMOVE THE BASIS FOR CONCERN THAT THE INVESTMENT INSURANCE AND GUARANTY COVERAGE HERETOFORE OR HEREAFTER ISSUED PURSUANT TO THE AGREEMENT MIGHT RESULT IN ACQUISITION BY THE GOVERNMENT OF THE UNITED STATES OF AMERICA, OR AN AGENCY THEREOF, OF DOMINION OVER ANY PART OF THE NATIONAL TERRITORY OF PANAMA IN CONTRAVENTION OF THE CONSTITUTION OF THE REPUBLIC OF PANAMA, AND TO LIMIT THE PROVISIONS OF THE AGREEMENT RELATING TO SUCCESSION AND SUBROGATION RIGHTS MORE CLEARLY TO THEIR INTENDED PURPOSE OF PROTECTING THE FINANCIAL INTEREST OF THE INSURER, WE PROPOSE THAT THE AGREEMENT BE AMENDED AS FOLLOWS:

IN PARAGRAPH 3(A) BEFORE THE SEMICOLON INSERT:

" , PROVIDED, HOWEVER, THAT WHENEVER THE LAWS OF THE REPUBLIC OF PANAMA DO NOT PERMIT THE ACQUISITION BY FOREIGN GOVERNMENTS OF ANY RIGHT, TITLE OR INTEREST WHICH AN INVESTOR MIGHT HAVE IN ANY PROPERTY SITUATED IN THE REPUBLIC OF PANAMA, NO TRANSFER TO THE GOVERNMENT OF THE UNITED STATES SHALL BE RECOGNIZED OF ANY SUCH RIGHT, TITLE OR INTEREST BUT THE GOVERNMENT OF THE REPUBLIC OF PANAMA SHALL RECOGNIZE THE TRANSFER TO THE GOVERNMENT LIMITED OFFICIAL USE

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OF THE UNITED STATES OF AMERICA OF ANY CLAIM THE INVESTOR MIGHT HAVE IN ACCORDANCE WITH THE LAWS OF THE REPUBLIC OF PANAMA TO OBTAIN AND RECEIVE FROM THE GOVERNMENT OF THE REPUBLIC OF PANAMA COMPENSATION FOR ANY RIGHT, TITLE OR INTEREST IN SAID PROPERTY. IT IS UNDERSTOOD THAT WHEN THE RIGHT, TITLE OR INTEREST OF THE INVESTOR CONCERNS LAND WITHIN THE REPUBLIC OF PANAMA, THE GOVERNMENT OF THE UNITED STATES OF AMERICA WILL

NOT SEEK TO ACQUIRE TITLE TO, DOMINION, POSSESSION, TENANCY OR OCCUPATION OF SAID LAND NOR TO ACQUIRE IN ANY FORM DOMINION OVER ANY PART OF THE SAID NATIONAL TERRITORY. THE GOVERNMENT OF THE REPUBLIC OF PANAMA WILL PERMIT INVESTORS TO MAKE APPROPRIATE ARRANGEMENTS TO DISPOSE OF ASSETS OR PROPERTIES WHICH STILL BELONG TO THEM BY TRANSFERRING THEM AS EXPEDITIOUSLY AS COMPATIBLE WITH OBTAINING FAIR VALUE AND IN ACCORDANCE WITH THE LAWS OF THE REPUBLIC OF PANAMA TO PERSONS ENTITLED TO ACQUIRE THEM PURSUANT TO SAID LAWS." UPON RECEIPT OF ANOTE FROM YOUR EXCELLENCY INDICATING THAT THE FOREGOING IS ACCEPTABLE TO THE GOVERNMENT OF THE REPUBLIC OF PANAMA, THE GOVERNMENT OF THE UNITED STATES OF AMERICA WILL CONSIDER THAT THIS NOTE AND YOUR REPLY THERETO CONSTITUTE AN AGREEMENT BETWEEN OUR TWO GOVERNMENTS ON THIS SUBJECT, THE AGREEMENT TO ENTER INTO FORCE ON THE DATE OF YOUR NOTE IN REPLY. ACCEPT, EXCELLENCY, THE RENEWED ASSURANCES OF MY HIGHEST CONSIDERATION. (END TEXT).

(4) WE RECOGNIZE THAT THIS APPROACH UNLIKELY TO MEET WITH APPROVAL OF BROTHERS GARAY, AS IT LEAVES FAIRLY BROAD ARBITRATION CLAUSE OF 1961 AGREEMENT UNTOUCHED. IF APPROACH IS TO SUCCEED, IT MUST BE PERCEIVED BY HIGHER GOP OFFICIALS AS A USG INITIATIVE DESIGNED TO PUT AN END TO TECHNICAL LEGAL DISPUTES. IF QUESTION RAISED ABOUT LOSS OF OTHER NEW ELEMENTS OF AGREEMENT TEXT PROPOSED BY GOP IN 1972, RESPONSE MIGHT BE THAT BOTH SIDES HAVE APPARENTLY BEEN CONTENT TO OPERATE UNDER 1961 AGREEMENT (EXCEPT INSOFAR AS LAW 14 HAS LIMITED OPIC OPERATIONS) AND SO THE ISSUES THAT HAVE TIED UP NEGOTIATIONS FOR SO LONG MAY NOT BE OF GREAT PRACTICAL IMPORTANCE AND ARE BEST SIDE-STEPPED.

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KTL EMBASSY COMMENT REQUESTED ON PROPOSED COURSE OF ACTION AND DRAFT TEXT. SHOULD QUESTION OF REPEAL OR RECISSION OF ARTICLES 3 AND 4 OF LAW 14 BE RAISED IN TRANSMITTAL NOTE? IF NOT, SHOULD ORAL PRESENTATION TO FOREIGN MINISTER SEEK ASSURANCE OF SUCH RESCISSION? DECONTROL 12/31/74. KISSINGER

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